

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TC COMPANY,

Plaintiff,

v.

No. 1:23-cv-00514 DLM/JMR

UNITED STATES FOREST SERVICE,

Defendant.

JOINT STATUS REPORT

Plaintiff and Defendant, by and through their respective undersigned counsel, submit this Joint Status Report per the Order entered November 27, 2023 (Doc. 28).

On 11/27/23 at 4:12 pm Plaintiff (attorney Weisman) emailed the USFS (AUSA Lucero) regarding items requested in the FOIA requests that are the subject of this suit, that Plaintiff has not received, per the review of Plaintiff's expert:

1. Daily logs for all burn days (ICS Form 214).
2. Red Cards for all prescribed fire personnel conducting the burn.
3. On site weather observations for all burn days (This could be on ICS Form 214).
4. Daily prescribed burn accomplishments (This could be on ICS Form 214).

The above items were included in the following FOIA request:

FOIA request 2 (Doc. 1), (pre-lawsuit FOIA request 2023-FS-R3-02406-F), (pre-lawsuit, FOIA appeal 2023-FS-WO-0059-A)

For the Cerro Pelado Fire that started on 4/22/2022,
- prescribed burn accomplishments (location and acreage),
- daily logs of all prescribed burn operations,
- weather observations for the area(s) of the prescribed burn operations,
- the prescribed fire personnel and the accompanying qualifications (Red Cards) on the Jemez Ranger District for 2022.

On December 8, 2023, at 5:41 pm, attorney Weisman emailed AUSA Lucero about the outstanding items above and the status report due December 11, 2023. On December 11, 2023, at 1:30 pm AUSA Lucero informed attorneys Weisman and Bauman:

I have had the Forest service go back and check with everyone they could think of to see if there are any other documents to be released and the answer is no. I was just informed that there are no form 214 for this fire. That being the case you now have all of the documents that are responsive to your FOIA request. I will so inform the court.

Upon receipt of the above, Plaintiff's counsel (attorneys Weisman and Bauman) reached out to their expert about the Forest Service not having any: 1. Daily logs for all burn days (ICS Form 214); 2. Red Cards for all prescribed fire personnel conducting the burn; 3. On site weather observations for all burn days (This could be on ICS Form 214); or 4. Daily prescribed burn accomplishments (This could be on ICS Form 214). Plaintiff's counsel seek more time to confer with their expert about the Forest Service's position in order to determine whether they will challenge the sufficiency of the Forest Service's search on these two FOIA requests. Plaintiff seeks an extension to January 8, 2023 for any further action, including proposing a briefing schedule, should that be necessary. At this time Plaintiff is not seeking or proposing a briefing schedule.

Respectfully submitted,

ALEXANDER M.M. UBALLEZ
United States Attorney

/s/ Manuel Lucero

MANUEL LUCERO
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87103
(505) 224-1467
manny.lucero@usdoj.gov

B & D LAW OFFICES, P.C.

By: /s/ Christopher P. Bauman

Christopher P. Bauman, cpb@bdsfirm.com

Mark C. Dow, mcd@bdsfirm.com

Cynthia L. Weisman, cw@bdsfirm.com

P.O. Box 30684

Albuquerque, NM 87190

(505) 883-3191

Counsel for Plaintiff

I HEREBY CERTIFY that on December 11, 2023, I filed the foregoing pleading electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Manuel Lucero, manny.lucero@usdoj.gov
Assistant U.S. Attorney

/s/ Christopher P. Bauman
Christopher P. Bauman